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STATUTORY INSTRUMENTS

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**2008 No. 1146**

**VALUE ADDED TAX**

**The Value Added Tax (Buildings and Land) Order 2008**

*Approved by the House of Commons*

<i>Made</i>	- - - -	<i>21st April 2008</i>
<i>Laid before the House of Commons</i>	- - - -	<i>22nd April 2008</i>
<i>Coming into force</i>	- -	<i>1st June 2008</i>

The Treasury, in exercise of the powers conferred by section 17(1) to (5) of the Finance Act 2006<sup>(1)</sup>, make the following Order:

**1. Citation, commencement and effect**

(1) This Order may be cited as the Value Added Tax (Buildings and Land) Order 2008 and comes into force on 1st June 2008.

(2) This Order, apart from article 4, has effect in relation to supplies made on or after 1st June 2008.

(3) Article 4 has effect in relation to supplies made on or after 1st June 2020.

(4) Paragraphs (2) and (3) are subject to Schedule 2 (transitional provisions and savings).

**2. Rewrite of Schedule 10 to VATA 1994**

For Schedule 10 to VATA 1994<sup>(2)</sup> (buildings and land) substitute—

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(1) 2006 c. 25.

(2) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23). Schedule 10 was amended by the Finance Act 1995 (c. 4), section 26(2) and (3); the Finance Act 1997 (c. 16) sections 35(2), 36(1), 37(2) and (3) and Schedule 18, Part 4(2); S.I. 1994/3013, 1995/279, 1997/51, 1999/593, 2002/1102 and 2004/778.

“SCHEDULE 10

Section 51

BUILDINGS AND LAND

PART 1

THE OPTION TO TAX LAND

*Introduction*

***Overview of the option to tax***

- 1.—(1) This Part of the Schedule makes provision for a person to opt to tax any land.
- (2) The effect of the option to tax is dealt with in paragraph 2 (exempt supplies become taxable), as read with paragraph 3.
- (3) Grants are excluded from the effect of paragraph 2 by—
- (a) paragraph 5 (dwellings designed or adapted, and intended for use, as dwelling etc),
  - (b) paragraph 6 (conversion of buildings for use as dwelling etc),
  - (c) paragraph 7 (charities),
  - (d) paragraph 8 (residential caravans),
  - (e) paragraph 9 (residential houseboats),
  - (f) paragraph 10 (relevant housing associations), and
  - (g) paragraph 11 (grant to individual for construction of dwelling).
- (4) Paragraphs 12 to 17 (anti-avoidance: developers of land etc) provide for certain supplies to which any grant gives rise to be excluded from the effect of paragraph 2.
- (5) Paragraphs 18 to 30 deal with—
- (a) the scope of the option to tax,
  - (b) the day from which the option to tax has effect,
  - (c) notification requirements,
  - (d) elections to opt to tax land subsequently acquired,
  - (e) the revocation of the option,
  - (f) the effect of the option to tax in relation to new buildings, and
  - (g) requirements for prior permission in the case of exempt grants made before the exercise of an option to tax.
- (6) Paragraphs 31 to 34 deal with definitions which apply for the purposes of this Part, as well as other supplemental matters.

*The option to tax*

***Effect of the option to tax: exempt supplies become taxable***

- 2.—(1) This paragraph applies if—
- (a) a person exercises the option to tax any land under this Part of this Schedule, and
  - (b) a grant is made in relation to the land at any time when the option to tax it has effect.

- (2) If the grant is made—
- (a) by the person exercising that option, or
  - (b) by a relevant associate (if that person is a body corporate),
- the grant does not fall within Group 1 of Schedule 9 (exemptions for land).
- (3) For the meaning of “relevant associate”, see paragraph 3.

***Meaning of “relevant associate”***

**3.—**(1) This paragraph explains for the purposes of this Part of this Schedule what is meant by a “relevant associate” in a case where a body corporate (“the opter”) exercises an option to tax in relation to any building or land.

(2) A body corporate is a relevant associate of the opter if under sections 43A to 43D(3) (groups of companies) the body corporate—

- (a) was treated as a member of the same group as the opter at the time when the option first had effect,
- (b) has been so treated at any later time when the opter had a relevant interest in the building or land, or
- (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) of this sub-paragraph at a time when that body had a relevant interest in the building or land.

(3) But a body corporate ceases to be a relevant associate of the opter in relation to the building or land in the following circumstances.

(4) The body corporate ceases to be a relevant associate of the opter in relation to the building or land at the time when all of the following conditions are first met—

- (a) the body corporate has no relevant interest in the building or land and no part of any consideration payable in respect of any disposal by the body corporate of such an interest is unpaid,
- (b) the body corporate or the opter is not treated under sections 43A to 43D as a member of the group mentioned above, and
- (c) the body corporate is not connected with any person who has a relevant interest in the building or land where that person is the opter or another relevant associate of the opter.

(5) The body corporate also ceases to be a relevant associate of the opter in relation to the building or land if the body corporate—

- (a) meets conditions specified in a public notice (see paragraph 4), or
- (b) gets the prior permission of the Commissioners(4) (also, see that paragraph).

The time when the body corporate ceases to be a relevant associate of the opter is determined in accordance with that paragraph.

(6) In this paragraph “relevant interest in the building or land” means an interest in, right over or licence to occupy the building or land (or any part of it).

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(3) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

(4) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines “the Commissioners” as meaning the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

***Permission for a body corporate to cease to be a relevant associate of the opter***

4.—(1) This paragraph applies for the purposes of paragraph 3(5) in relation to a body corporate which has been a relevant associate of the opter.

(2) If the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to the body corporate, it ceases to be a relevant associate of the opter only if notification of those conditions being met is given to the Commissioners.

(3) The notification must—

- (a) be made in a form specified in a public notice,
- (b) state the day from which the body corporate is to cease to be a relevant associate of the opter (which may not be before the day on which the notification is given),
- (c) contain a statement by the body corporate certifying that, on that day, the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to it, and
- (d) contain other information specified in a public notice.

(4) An application for the prior permission of the Commissioners must—

- (a) be made in a form specified in a public notice,
- (b) contain a statement by the body corporate certifying which (if any) of the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to it, and
- (c) contain other information specified in a public notice.

(5) If the body corporate gets the prior permission of the Commissioners, it ceases to be a relevant associate of the opter from—

- (a) the day on which the Commissioners give their permission, or
- (b) such earlier or later day as they specify in their permission.

(6) The Commissioners may specify an earlier day only if—

- (a) the body corporate has purported to give a notification of its ceasing to be a relevant associate of the opter,
- (b) the conditions specified in the public notice are not, in the event, met in relation to the body corporate, and
- (c) the Commissioners consider that the grounds on which those conditions are not so met are insignificant.

(7) The day specified may be the day from which the body corporate would have ceased to be a relevant associate of the opter if those conditions had been so met.

(8) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the application as if it had not been made.

*Exclusions from effect of option to tax*

***Dwellings designed or adapted, and intended for use, as dwelling etc***

5.—(1) An option to tax has no effect in relation to any grant in relation to a building or part of a building if the building or part of the building is designed or adapted, and is intended, for use—

- (a) as a dwelling or number of dwellings, or
- (b) solely for a relevant residential purpose.

(2) In relation to the expression “relevant residential purpose”, see the certification requirement imposed as a result of the application of Note (12) of Group 5 of Schedule 8(5) by paragraph 33 of this Schedule.

***Conversion of buildings for use as dwelling etc***

6.—(1) An option to tax has no effect in relation to any grant made to a person (“the recipient”) in relation to a building or part of a building if the recipient certifies that the building or part of the building is intended for use—

- (a) as a dwelling or number of dwellings, or
  - (b) solely for a relevant residential purpose.
- (2) The recipient must give the certificate to the person making the grant (“the seller”)—
- (a) within the period specified in a public notice, or
  - (b) if the seller agrees, at any later time before the seller makes a supply to which the grant gives rise.
- (3) The recipient may give the certificate to the seller only if the recipient—
- (a) intends to use the building or part of the building as mentioned above,
  - (b) has the relevant conversion intention, or
  - (c) is a relevant intermediary.
- (4) The recipient is a relevant intermediary if—
- (a) the recipient intends to dispose of the relevant interest to another person, and
  - (b) that other person gives the recipient a certificate stating that the other person has the relevant conversion intention or the relevant disposal intention.
- (5) For this purpose a person has the relevant disposal intention if—
- (a) the person intends to dispose of the relevant interest to a third person, and
  - (b) the third person gives a qualifying certificate to the person.
- (6) A person (P) gives a qualifying certificate to another if P gives a certificate to that other person stating that P has the relevant conversion intention or intends to dispose of the relevant interest to another person (Q) who has given a certificate to P stating—
- (a) that Q has the relevant conversion intention, or
  - (b) that Q intends to dispose of the relevant interest to another person who has given a qualifying certificate to Q,

and so on (in the case of further disposals of the relevant interest).

(7) In this paragraph—

“the relevant conversion intention”, in relation to a person, means an intention of the person to convert the building or part of the building with a view to its being used as mentioned above, and

“the relevant interest”, in relation to any interest in the building or part of the building to which the grant gives rise, means the whole of that interest.

(8) For the purposes of this paragraph a building or part of a building is not to be regarded as intended for use as a dwelling or number of dwellings at any time if there is intended to be a period before that time during which it will not be so used (but disregarding use for incidental or other minor purposes).

(9) For the purposes of this paragraph the reference to use solely for a relevant residential purpose is to be read without regard to Note (12) of Group 5 of Schedule 8 (which would otherwise apply as a result of paragraph 33 of this Schedule).

- (10) The Commissioners may publish a notice for the purposes of this paragraph—
- (a) preventing a person from giving any certificate under this paragraph unless the person meets conditions specified in the notice,
  - (b) specifying the form in which any certificate under this paragraph must be made, and
  - (c) specifying any information which any certificate under this paragraph must contain.

### ***Charities***

7.—(1) An option to tax has no effect in relation to any grant made to a person in relation to a building or part of a building intended by the person for use—

- (a) solely for a relevant charitable purpose, but
- (b) not as an office.

(2) In relation to the expression “relevant charitable purpose”, see the certification requirement imposed as a result of the application of Note (12) of Group 5 of Schedule 8 by paragraph 33 of this Schedule.

### ***Residential caravans***

8.—(1) An option to tax has no effect in relation to any grant made in relation to a pitch for a residential caravan.

(2) A caravan is not a residential caravan if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.

### ***Residential houseboats***

9.—(1) An option to tax has no effect in relation to any grant made in relation to facilities for the mooring of a residential houseboat.

“Mooring” includes anchoring or berthing.

- (2) In this paragraph—
- (a) “houseboat” means a houseboat within the meaning of Group 9 of Schedule 8, and
  - (b) a houseboat is not a residential houseboat if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.

### ***Relevant housing associations***

10.—(1) An option to tax has no effect in relation to any grant made to a relevant housing association in relation to any land if the association certifies that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use—

- (a) as a dwelling or number of dwellings, or
- (b) solely for a relevant residential purpose.

- (2) The association must give the certificate to the person making the grant (“the seller”)—
- (a) within the period specified in a public notice, or
  - (b) if the seller agrees, at any later time before the seller makes a supply to which the grant gives rise.

- (3) In this paragraph “relevant housing association” means—
- (a) a registered social landlord within the meaning of Part 1 of the Housing Act 1996<sup>(6)</sup> (English or Welsh registered social landlords),
  - (b) a registered social landlord within the meaning of the Housing (Scotland) Act 2001<sup>(7)</sup> (Scottish registered social landlords), or
  - (c) a registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992<sup>(8)</sup> (Northern Irish registered housing associations).
- (4) For the purposes of this paragraph the reference to use solely for a relevant residential purpose is to be read without regard to Note (12) of Group 5 of Schedule 8<sup>(9)</sup> (which would otherwise apply as a result of paragraph 33 of this Schedule).
- (5) The Commissioners may publish a notice for the purposes of this paragraph—
- (a) specifying the form in which any certificate under this paragraph must be made, and
  - (b) specifying any information which any certificate under this paragraph must contain.

#### ***Grant to individual for construction of dwelling***

11. An option to tax has no effect in relation to any grant made to an individual if—
- (a) the land is to be used for the construction of a building intended for use by the individual as a dwelling, and
  - (b) the construction is not carried out in the course or furtherance of a business carried on by the individual.

#### *Anti-avoidance*

#### ***Developers of exempt land***

- 12.—(1) A supply is not, as a result of an option to tax, a taxable supply if—
- (a) the grant giving rise to the supply was made by a person (“the grantor”) who was a developer of the land, and
  - (b) the exempt land test is met.
- (2) The exempt land test is met if, at the time when the grant was made (or treated for the purposes of this paragraph as made), the relevant person intended or expected that the land—
- (a) would become exempt land (whether immediately or eventually and whether or not as a result of the grant), or
  - (b) would continue, for a period at least, to be exempt land.
- (3) “The relevant person” means—
- (a) the grantor, or
  - (b) a development financier.
- (4) For the meaning of a development financier, see paragraph 14.
- (5) For the meaning of “exempt land”, see paragraphs 15 and 16.
- (6) If a supply is made by a person other than the person who made the grant giving rise to it—

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<sup>(6)</sup> 1996 c. 52.

<sup>(7)</sup> 2001 asp 10; section 111 of that Act provides that a registered social landlord means a body registered in the register maintained under section 57 of that Act.

<sup>(8)</sup> S.I. 1992/1725 (N.I.15).

<sup>(9)</sup> Group 5 of Schedule 8 was substituted by S.I. 1995/280.

- (a) the person making the supply is treated for the purposes of this paragraph as the person who made the grant giving rise to it, and
  - (b) the grant is treated for the purposes of this paragraph as made at the time when that person made the first supply arising from the grant.
- (7) For a special rule in the case of a grant made on or after 19th March 1997 and before 10th March 1999, see paragraph 17.
- (8) Nothing in this paragraph applies in relation to a supply arising from—
- (a) a grant made before 26th November 1996, or
  - (b) a grant made on or after that date but before 30th November 1999, in pursuance of a written agreement entered into before 26th November 1996, on terms which (as terms for which provision was made by that agreement) were fixed before 26th November 1996.

### ***Meaning of grants made by a developer***

- 13.**—(1) This paragraph applies for the purposes of paragraph 12.
- (2) A grant made by any person (“the grantor”) in relation to any land is made by a developer of the land if—
- (a) the land is, or was intended or expected to be, a relevant capital item (see sub-paragraphs (3) to (5)), and
  - (b) the grant is made at an eligible time as respects that capital item (see sub-paragraph (6)).
- (3) The land is a relevant capital item if—
- (a) the land, or
  - (b) the building or part of a building on the land,
- is a capital item in relation to the grantor.
- (4) The land was intended or expected to be a relevant capital item if the grantor, or a development financier, intended or expected that—
- (a) the land, or
  - (b) a building or part of a building on, or to be constructed on, the land,
- would become a capital item in relation to the grantor or any relevant transferee.
- (5) A person is a relevant transferee if the person is someone to whom the land, building or part of a building was to be transferred—
- (a) in the course of a supply, or
  - (b) in the course of a transfer of a business or part of a business as a going concern.
- (6) A grant is made at an eligible time as respects a capital item if it is made before the end of the period provided in the relevant regulations for the making of adjustments relating to the deduction of input tax as respects the capital item.
- (7) But if—
- (a) a person other than the grantor is treated by paragraph 12(6) as making the grant of the land, and
  - (b) the grant is consequently treated as made at what would otherwise be an ineligible time, the grant is treated instead as if were not made at an ineligible time.
- (8) In this paragraph a “capital item”, in relation to any person, means an asset falling, in relation to the person, to be treated as a capital item for the purposes of the relevant regulations.

(9) In this paragraph “the relevant regulations”, as respects any item, means regulations under section 26(3) and (4) providing for adjustments relating to the deduction of input tax to be made as respects that item.

***Meaning of “development financier”***

**14.**—(1) This paragraph explains for the purposes of paragraphs 12 to 17 what is meant, in relation to the grantor of any land, by a development financier.

(2) A “development financier” means a person who—

- (a) has provided finance for the grantor’s development of the land, or
- (b) has entered into any arrangement to provide finance for the grantor’s development of the land,

with the intention or in the expectation that the land will become exempt land or continue (for a period at least) to be exempt land.

(3) For the purposes of this paragraph references to finance being provided for the grantor’s development of the land are to doing (directly or indirectly) any one or more of the following—

- (a) providing funds for meeting the whole or any part of the cost of the grantor’s development of the land,
- (b) procuring the provision of such funds by another,
- (c) providing funds for discharging (in whole or in part) any liability that has been or may be incurred by any person for or in connection with the raising of funds to meet the cost of the grantor’s development of the land, and
- (d) procuring that any such liability is or will be discharged (in whole or in part) by another.

(4) For the purposes of this paragraph references to providing funds for a particular purpose are to—

- (a) the making of a loan of funds that are or are to be used for that purpose,
- (b) the provision of any guarantee or other security in relation to such a loan,
- (c) the provision of any of the consideration for the issue of any shares or other securities issued wholly or partly for raising those funds,
- (d) the provision of any consideration for the acquisition by any person of any shares or other securities issued wholly or partly for raising those funds, or
- (e) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose.

(5) For the purposes of this paragraph references to the grantor’s development of the land are to the acquisition by the grantor of the asset which—

- (a) consists in the land or a building or part of a building on the land, and
- (b) is, or (as the case may be) was intended or expected to be, a relevant capital item in relation to the grantor (within the meaning of paragraph 13).

(6) For this purpose the reference to the acquisition of the asset includes—

- (a) its construction or reconstruction, and
- (b) the carrying out in relation to it of any other works by reference to which it is, or was intended or expected to be, a relevant capital item (within the meaning of paragraph 13).

(7) In this paragraph “arrangement” means any agreement, arrangement or understanding (whether or not legally enforceable).

### ***Meaning of “exempt land”: basic definition***

15.—(1) This paragraph explains for the purposes of paragraphs 12 to 17 what is meant by exempt land.

(2) Land is exempt land if, at any time before the end of the relevant adjustment period as respects that land—

- (a) a relevant person is in occupation of the land, and
- (b) that occupation is not wholly, or substantially wholly, for eligible purposes.

(3) Each of the following is a relevant person—

- (a) the grantor,
- (b) a person connected with the grantor,
- (c) a development financier, and
- (d) a person connected with a development financier.

(4) The relevant adjustment period as respects any land is the period provided in the relevant regulations (within the meaning of paragraph 13) for the making of adjustments relating to the deduction of input tax as respects the land.

(5) For the purposes of this paragraph any question whether a person’s occupation of any land is “wholly, or substantially wholly,” for eligible purposes is to be decided by reference to criteria specified in a public notice.

### ***Meaning of “exempt land”: eligible purposes***

16.—(1) This paragraph explains what is meant for the purposes of paragraph 15 by a person occupying land for eligible purposes.

(2) A person cannot occupy land at any time for eligible purposes unless the person is a taxable person at that time (but this rule is qualified by sub-paragraphs (5) and (6)).

(3) A taxable person occupies land for eligible purposes so far as the occupation is for the purpose of making creditable supplies (but this rule is qualified by sub-paragraphs (5) to (7)).

(4) “Creditable supplies” means supplies which—

- (a) are or are to be made in the course or furtherance of a business carried on by the person, and
- (b) are supplies of such a description that the person would be entitled to a credit for any input tax wholly attributable to those supplies.

(5) Any occupation of land by a body to which section 33(10) applies (local authorities etc) is occupation of the land for eligible purposes so far as the occupation is for purposes other than those of a business carried on by the body.

(6) Any occupation of land by a Government department (within the meaning of section 41(11)) is occupation of the land for eligible purposes.

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(10) Section 33 has been amended by the Greater London Authority Act 1999 (c. 29), section 423 and Schedule 34, Part 7; the Merchant Shipping Act 1995 (c. 21) section 314(2) and Schedule 13, paragraph 95; and the Communications Act 2003 (c. 21) section 406(1) and Schedule 17, paragraph 129(1), (2)(a) and (b).

(11) Section 41 has been amended by the Scotland Act 1998 (c. 46), section 125 and Schedule 8, paragraph 30; the Government of Wales Act 1998 (c. 38), section 125 and Schedule 12, paragraph 35; the Health Act 1999 (c. 8), section 65(1) and Schedule 4, paragraph 86; the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 6(2) and Schedule 5, paragraph 40; the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 33(3); the Government of Wales Act 2006 (c. 32), section 160(1) and Schedule 10, paragraph 39; and S.I. 2000/90.

(7) Any occupation of land by a person is occupation of the land for eligible purposes in so far as the occupation arises merely by reference to any automatic teller machine of the person which is fixed to the land.

(8) If a person occupying land—

- (a) holds the land in order to put it to use for particular purposes, and
- (b) does not occupy it for any other purpose,

the person is treated for the purposes of this paragraph, for so long as the conditions in paragraphs (a) and (b) continue to be met, as occupying the land for the purposes for which the person proposes to use it.

(9) If land is in the occupation of a person (“A”) who—

- (a) is not a taxable person, but
- (b) is a person whose supplies are treated for the purposes of this Act as made by another person (“B”) who is a taxable person,

the land is treated for the purposes of this paragraph as if A and B were a single taxable person.

(10) For the purposes of this paragraph a person occupies land—

- (a) whether the person occupies it alone or together with one or more other persons, and
- (b) whether the person occupies all of the land or only part of it.

***Paragraph 12: grants made on or after 19th March 1997 and before 10th March 1999***

17.—(1) A grant in relation to land which was made—

- (a) on or after 19th March 1997, and
- (b) before 10th March 1999,

is treated for the purposes of paragraph 12 as made on 10th March 1999 if, at the time of the grant, the capital item test was met.

(2) The capital item test was met if the person making the grant, or a development financier, intended or expected that—

- (a) the land, or
- (b) a building or part of a building on, or to be constructed on, the land,

would become a capital item in relation to the grantor or any relevant transferee but it had not become such an item.

(3) For the purposes of that test “capital item” and “relevant transferee” have the meaning given by paragraph 13.

*Scope of the option, its duration, notification etc*

***Scope of the option***

18.—(1) An option to tax has effect in relation to the particular land specified in the option.

(2) If an option to tax is exercised in relation to—

- (a) a building, or
- (b) part of a building,

the option has effect in relation to the whole of the building and all the land within its curtilage.

(3) If an option to tax—

(a) is exercised in relation to any land, but  
 (b) is not exercised by reference to a building or part of a building,  
 the option is nonetheless taken to have effect in relation to any building which is (or is to be) constructed on the land (as well as in relation to land on which no building is constructed).

(4) For the purposes of this paragraph—

(a) buildings linked internally or by a covered walkway, and  
 (b) complexes consisting of a number of units grouped around a fully enclosed concourse,  
 are treated as a single building.

(5) But for those purposes—

(a) buildings which are linked internally are not treated as a single building if the internal link is created after the buildings are completed, and  
 (b) buildings which are linked by a covered walkway are not treated as a single building if the walkway starts to be constructed after the buildings are completed.

(6) In this paragraph a “building” includes—

(a) an enlarged or extended building,  
 (b) an annexe to a building, and  
 (c) a planned building.

(7) In this paragraph “covered walkway” does not include a covered walkway to which the general public has reasonable access.

***The day from which the option has effect***

**19.**—(1) An option to tax has effect from—

(a) the start of the day on which it is exercised, or  
 (b) the start of any later day specified in the option.

(2) But if, when an option to tax is exercised, the person exercising the option intends to revoke it in accordance with paragraph 23 (revocation of option: the “cooling off” period), the option is treated for the purposes of this Act as if it had never been exercised.

(3) An option to tax may be revoked in accordance with paragraph 22(2) or (3) and any of paragraphs 23 to 25, but not otherwise.

(4) This paragraph needs to be read with—

(a) paragraph 20 (requirement to notify the option), and  
 (b) paragraph 29(3) (application for prior permission in the case of an exempt grant before the exercise of an option to tax).

***Requirement to notify the option***

**20.**—(1) An option to tax has effect only if—

(a) notification of the option is given to the Commissioners<sup>(12)</sup> within the allowed time,  
 and

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(12) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines “the Commissioners” as meaning the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

- (b) that notification is given together with such information as the Commissioners may require.
- (2) Notification of an option is given within the allowed time if (and only if) it is given—
  - (a) before the end of the period of 30 days beginning with the day on which the option was exercised, or
  - (b) before the end of such longer period beginning with that day as the Commissioners may in any particular case allow.
- (3) The Commissioners may publish a notice for the purposes of this paragraph specifying—
  - (a) the form in which a notification under this paragraph must be made, and
  - (b) the information which a notification under this paragraph must contain.
- (4) Notification of an option to tax does not need to be given under this paragraph if the option is treated as exercised in accordance with paragraph 29(3).

***Real estate elections: elections to opt to tax land subsequently acquired***

**21.**—(1) A person (E) may make an election (a “real estate election”) for this paragraph to have effect in relation to—

- (a) relevant interests in any building or land which E acquires after the election is made, and
  - (b) relevant interests in any building or land which a body corporate acquires after the election is made at a time when the body is a relevant group member.
- (2) If E makes a real estate election—
- (a) E is treated for the purposes of this Part of this Schedule as if E had exercised an option to tax in relation to the building or land in which the relevant interest is acquired,
  - (b) that option is treated for those purposes as if it had been exercised on the day on which the acquisition was made and as if it had effect from the start of that day, and
  - (c) paragraph 20 does not apply in relation to that option,

but this sub-paragraph is subject to sub-paragraphs (3) to (5).

(3) A person (P) is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land where at any time—

- (a) P, or any body corporate which was a relevant group member at that time, exercises an option to tax in relation to the building (or part of the building) or land apart from this paragraph, and
- (b) that option has effect from a time earlier than the time from which an option to tax exercised by P in relation to the building or land would otherwise have been treated as having effect as a result of this paragraph.

(4) A person (P) is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land in which a relevant interest is acquired (“the later interest”) if—

- (a) the person making the acquisition in question held another relevant interest in that building or land before P makes a real estate election, and
- (b) the person making the acquisition in question continues to hold that other relevant interest at the time when the later interest is acquired.

(5) A person is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land if—

- (a) a relevant interest in the building or land is acquired as mentioned in sub-paragraph (1), and

- (b) on the relevant assumptions the case would fall within paragraph 28 (pre-option exempt grants: requirement for prior permission before exercise of option to tax).
- (6) The relevant assumptions are that—
  - (a) the effect of this paragraph is disregarded, and
  - (b) the day from which the person would want the option to tax to have effect for the purposes of paragraphs 28 or 29(3) is the day on which the relevant interest is acquired.
- (7) A real estate election has effect only if—
  - (a) notification of the election is given to the Commissioners before the end of the period of 30 days beginning with the day on which it was made or such longer period as the Commissioners may in any particular case allow,
  - (b) the notification is made in a form specified in a public notice, and
  - (c) the notification contains information so specified.
- (8) The Commissioners may at any time require a person who has made a real estate election to give to the Commissioners information specified in a public notice before the end of—
  - (a) the period of 30 days beginning with that time, or
  - (b) such longer period as the Commissioners may in any particular case allow.
- (9) If a person (P) does not comply with that requirement—
  - (a) the Commissioners may revoke the election, and
  - (b) that revocation has effect in relation to relevant interests in any building or land acquired after the notified time by P or a body corporate which is a relevant group member at the time of acquisition.

“The notified time” means the time specified in a notification given by the Commissioners to P (which may not be before the notification is given).
- (10) A real estate election may not be revoked except in accordance with sub-paragraph (9).
- (11) If a real estate election made by a person (P) is revoked in accordance with that sub-paragraph, another real estate election may be made at any subsequent time by—
  - (a) P, or
  - (b) any body corporate which is a relevant group member at that subsequent time,

but only with the prior permission of the Commissioners.

- (12) In this paragraph—

“relevant group member”, in relation to any person making a real estate election and any time, means a body corporate which is treated under sections 43A to 43D(13) as a member of the same group as that person at that time, and

“relevant interest”, in relation to any building or land, means any interest in, right over or licence to occupy the building or land (or any part of it).

#### ***Real estate elections: supplementary***

- 22.—(1) This paragraph applies if, at any time (“the relevant time”), a person (E) makes a real estate election under paragraph 21.

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(13) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

(2) An option to tax exercised in relation to any building or part of any building before the relevant time by—

- (a) E, or
- (b) any relevant group member,

is treated for the purposes of this Part of this Schedule as if it had been revoked from the relevant time if, at that time, neither E nor any relevant group member has a relevant interest in that building.

(3) An option to tax exercised in relation to any land (otherwise than by reference to any building or part of a building) before the relevant time by—

- (a) E, or
- (b) any relevant group member,

is treated for the purposes of this Part of this Schedule as if it had been revoked in accordance with sub-paragraph (4) from the relevant time if, at that time, neither E nor any relevant group member has a relevant interest in that land, or E or any relevant group member has a relevant interest in only some of it.

(4) The option is treated for the purposes of this Part of this Schedule as if it had been revoked in relation to—

- (a) that land, or
- (b) the parts of that land in which neither E nor any relevant group member has a relevant interest at the relevant time,

as the case may be.

(5) Sub-paragraphs (2) and (3) are subject to paragraph 26 (anti-avoidance).

(6) An option to tax (“the original option”) exercised in relation to any land (otherwise than by reference to any building or part of a building) before the relevant time by—

- (a) E, or
- (b) any relevant group member,

may, in circumstances specified in a public notice, be converted by E into separate options to tax if, at the relevant time, E or any relevant group member has a relevant interest in the land or any part of it.

(7) The original option is converted into separate options to tax different parcels of land comprised in that land or part.

(8) Those separate options to tax are treated for the purposes of this Part of this Schedule—

- (a) as if they had been exercised by E, and
- (b) as if they had effect from the time from which the original option had effect.

(9) But—

- (a) those separate options to tax are treated for the purposes of paragraph 3(2) as if they had effect from the relevant time, and
- (b) paragraph 23 (revocation of an option: the “cooling off” period) does not apply to those separate options to tax.

(10) The notification of the election given by E must identify—

- (a) the separate options to tax treated as exercised by E as a result of sub-paragraphs (6) to (8), and
- (b) the different parcels of land in relation to which those separate options to tax are treated as having effect.

(11) In this paragraph—

- (a) any reference to any relevant group member is to a body corporate which is a relevant group member at the relevant time, and
- (b) any reference to any relevant group member, in relation to any relevant interest in any building or land (or any part of it), is to any relevant group member regardless of whether it has exercised an option to tax the building or land (or any part of it).

(12) In this paragraph “relevant group member” and “relevant interest”, have the meaning given by paragraph 21.

(13) In this paragraph any reference to a real estate election under paragraph 21 does not include an election which is made under sub-paragraph (11) of that paragraph.

***Revocation of option: the “cooling off” period***

**23.**—(1) An option to tax any land exercised by any person (“the taxpayer”) may be revoked with effect from the day on which it was exercised if—

- (a) the time that has lapsed since the day on which the option had effect is less than 6 months,
- (b) the taxpayer has not used the land since the option had effect,
- (c) no tax has become chargeable as a result of the option,
- (d) there is no relevant transfer of a business as a going concern (see sub-paragraph (2)), and
- (e) notification of the revocation is given to the Commissioners (see sub-paragraph (3)).

(2) There is no relevant transfer of a business as a going concern if, since the option had effect, no grant in relation to the land has been made which is treated as neither a supply of goods nor a supply of services because—

- (a) the supply is a supply of the assets of a business by the taxpayer to a person to whom the business (or part of it) is transferred as a going concern, or
- (b) the supply is a supply of assets of a business by a person to the taxpayer to whom the business (or part of it) is so transferred.

(3) The notification of the revocation must—

- (a) be made in a form specified in a public notice, and
- (b) contain information so specified.

(4) The Commissioners may publish a notice for the purposes of this paragraph providing that a revocation under this paragraph is effective only if—

- (a) the conditions specified in the notice are met in relation to the option, or
- (b) the taxpayer gets the prior permission of the Commissioners on an application made to them before the end of the 6 month period mentioned above.

(5) A notice under sub-paragraph (4) may—

- (a) provide that, in a case falling with paragraph (a) of that sub-paragraph, the taxpayer must certify that the conditions specified under that paragraph are met in relation to the option,
- (b) specify the form in which an application under paragraph (b) of that sub-paragraph must be made,
- (c) provide that an application under that paragraph must contain a statement by the taxpayer certifying which (if any) of the conditions specified under sub-paragraph (4) (a) are met in relation to the option,

- (d) specify other information which an application under sub-paragraph (4)(a) must contain, and
- (e) provide that the Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, the Commissioners may treat the revocation as if it had not been made.

***Revocation of option: lapse of 6 years since having a relevant interest***

**24.**—(1) An option to tax exercised by any person in relation to any building or land is treated for the purposes of this Part of this Schedule as revoked if the person does not have a relevant interest in the building or land throughout any continuous period of 6 years beginning at any time after the option has effect.

(2) The option to tax is treated for the purposes of this Part of this Schedule as revoked from the end of that period.

(3) In this paragraph “a relevant interest in the building or land” means an interest in, right over or licence to occupy the building or land (or any part of it).

(4) This paragraph is subject to paragraph 26 (anti-avoidance).

***Revocation of option: lapse of more than 20 years since option had effect***

**25.**—(1) An option to tax any land exercised by any person (“the taxpayer”) may be revoked if the time that has lapsed since the day on which the option had effect is more than 20 years and—

- (a) at the time when the option is to be revoked the conditions specified in a public notice are met in relation to the option (in which case, see sub-paragraphs (2) to (4)), or
- (b) the taxpayer gets the prior permission of the Commissioners (in which case, see the remaining sub-paragraphs).

(2) If the conditions specified in the public notice are met in relation to the option, the revocation has effect only if notification of the revocation is given to the Commissioners.

(3) The notification must—

- (a) be made in the specified form,
- (b) state the day from which the option is to be revoked (which may not be before the day on which the notification is given),
- (c) contain a statement by the taxpayer certifying that, on that day, the conditions specified in the public notice are met in relation to the option, and
- (d) contain other information specified in a public notice.

(4) If—

- (a) notification of the revocation of an option is given to the Commissioners on the basis that the conditions specified in the public notice were met in relation to the option, but
- (b) it is subsequently discovered that those conditions were not met in relation to the option,

the Commissioners may nonetheless treat the option as if it had been validly revoked in accordance with this paragraph.

(5) An application for the prior permission of the Commissioners must—

- (a) be made in a form specified in a public notice,
- (b) contain a statement by the taxpayer certifying which (if any) of the conditions specified in the public notice under sub-paragraph (1)(a) are met in relation to the option, and
- (c) contain other information specified in a public notice.

(6) If the taxpayer gets the prior permission of the Commissioners for the revocation of an option, the option is revoked from—

- (a) the day on which the Commissioners give their permission, or
- (b) such earlier or later day as they specify in their permission.

(7) The Commissioners may specify an earlier day only if—

- (a) the taxpayer has purported to give a notification of the revocation of the option,
- (b) the conditions specified in the public notice are not, in the event, met in relation to the option, and
- (c) the Commissioners consider that the grounds on which those conditions are not so met are insignificant.

(8) The day specified may be the day from which the option would have been revoked if those conditions had been so met.

(9) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the revocation as if it had not been made.

***Revocation of option under paragraph 22(2) or (3) or 24: anti-avoidance***

**26.**—(1) Paragraphs 22(2) and (3) and 24 (which in particular circumstances treat an option to tax exercised in relation to any building or land as revoked) do not apply if—

- (a) the person exercising the option mentioned in paragraph 22(2) or (3) or 24 (“the opter”) is a body corporate,
- (b) the opter has been treated under sections 43A to 43D(14) as a member of a group at any time in the relevant 6 year period, and
- (c) any relevant associate of the opter in relation to the building or land ceases to be treated under those sections as a member of the same group as the opter without at the same time ceasing to be a relevant associate of the opter in relation to the building or land in accordance with paragraph 3(4).

(2) In sub-paragraph (1)(c) the reference to a relevant associate of the opter in relation to any building or land includes a body corporate which has been a relevant associate of the opter in relation to the building or land at any time before the start of the relevant 6 year period.

(3) In this paragraph “the relevant 6 year period”, in relation to any option to tax, means the period of 6 years ending with the time from which the option would (but for this paragraph) have been treated as revoked as a result of paragraph 22(2) or (3) or 24.

***Exclusion of new building from effect of an option***

**27.**—(1) This paragraph applies if—

- (a) a person (“the taxpayer”) has at any time opted to tax any land,
- (b) at any subsequent time the construction of a building (“the new building”) on the land begins, and
- (c) no land within the curtilage of the new building is within the curtilage of an existing building.

(2) The taxpayer may exclude—

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(14) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

- (a) the whole of the new building, and
- (b) all the land within its curtilage,

from the effect of the option if notification of that exclusion is given to the Commissioners.

- (3) The exclusion has effect from the earliest of the following times—
  - (a) the time when a grant of an interest in, or in any part of, the new building is first made,
  - (b) the time when the new building, or any part of it, is first used,
  - (c) the time when the new building is completed.
- (4) The notification of the exclusion must—
  - (a) be made in a form specified in a public notice,
  - (b) be given before the time from which it is to have effect and state that time, and
  - (c) contain other information so specified.

(5) Sub-paragraphs (4) to (6) of paragraph 18 (meaning of “building”) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

(6) For the purposes of this paragraph the reference to the construction of a building is to be read without regard to Note (17)(15) or (18)(b) of Group 5 of Schedule 8 (which would otherwise apply as a result of paragraph 33 of this Schedule).

(7) The Commissioners may publish a notice for determining the time at which the construction of a building on any land is to be taken to begin for the purposes of this paragraph.

***Pre-option exempt grants: requirement for prior permission before exercise of option to tax***

- 28.**—(1) This paragraph applies if—
- (a) a person wants to exercise an option to tax any land with effect from a particular day,
  - (b) at any time (“the relevant time”) before that day the person has made, makes or intends to make an exempt supply to which any grant in relation to the land gives rise, and
  - (c) the relevant time is within the period of 10 years ending with that day.
- (2) The person may exercise the option to tax the land only if—
- (a) the conditions specified in a public notice are met in relation to the land, or
  - (b) the person gets the prior permission of the Commissioners (but see also paragraph 30).
- (3) The Commissioners must refuse their permission if they are not satisfied that there would be a fair and reasonable attribution of relevant input tax to relevant supplies.
- (4) For this purpose—
- “relevant input tax” means input tax incurred, or likely to be incurred, in relation to the land, and
  - “relevant supplies” means supplies to which any grant in relation to the land gives rise which would be taxable (if the option has effect).
- (5) In deciding whether there would be a fair and reasonable attribution of relevant input tax to relevant supplies, the Commissioners must have regard to all the circumstances of the case.
- (6) But they must have regard in particular to—

- (a) the total value of any exempt supply to which any grant in relation to the land gives rise and which is made or to be made before the day from which the person wants the option to have effect,
- (b) the expected total value of any supply to which any grant in relation to the land gives rise that would be taxable (if the option has effect), and
- (c) the total amount of input tax incurred, or likely to be incurred, in relation to the land.

***Paragraph 28: application for prior permission***

**29.**—(1) An application for the prior permission of the Commissioners under paragraph 28 must—

- (a) be made in a form specified in a public notice,
- (b) contain a statement by the applicant certifying which (if any) of the conditions specified in the public notice under paragraph 28(2)(a) are met in relation to the land, and
- (c) contain other information specified in a public notice.

(2) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the application as if it had not been made.

(3) If the applicant (A) gets the prior permission of the Commissioners, A is, as a result of this sub-paragraph, treated for the purposes of this Part of this Schedule as if A had exercised the option to tax the land with effect from—

- (a) the start of the day on which the application was made, or
- (b) the start of any later day specified in the application.

***Paragraph 28: purported exercise where prior permission not obtained***

**30.**—(1) This paragraph applies if—

- (a) an option to tax was purportedly exercised in a case where, before the option could be exercised, the prior permission of the Commissioners was required under paragraph 28, and
- (b) notification of the purported option was purportedly given to the Commissioners in accordance with paragraph 20.

(2) The Commissioners may, in the case of any such option, subsequently dispense with the requirement for their prior permission to be given under paragraph 28.

(3) If the Commissioners dispense with that requirement, a purported option—

- (a) is treated for the purposes of this Part of this Schedule as if it had instead been validly exercised, and
- (b) has effect in accordance with paragraph 19.

*Supplementary provisions*

***Timing of grant and supplies***

**31.**—(1) This paragraph applies if—

- (a) an option to tax is exercised in relation to any land,
- (b) a grant in relation to the land would otherwise be taken to have been made (whether in whole or in part) before the time when the option has effect, and

(c) the grant gives rise to supplies which are treated for the purposes of this Act as taking place after that time.

(2) For the purposes of this Part of this Schedule, the option to tax has effect, in relation to those supplies, as if the grant had been made after that time.

***Supplies in relation to a building where part designed or intended for residential or charitable use and part designed or intended for other uses***

**32.** Note (10) of Group 5(16) of Schedule 8 applies for the purposes of this Part of this Schedule.

***Definitions in Schedules 8 or 9 that are applied for the purposes of this Schedule***

**33.** In this Part of this Schedule, references to the expressions listed in the first column are to be read in accordance with the provisions listed in the second column—

<i>Expression</i>	<i>Provision</i>
building designed or adapted for use as a dwelling or a number of dwellings	Note (2) to Group 5 of Schedule 8(17)
completion of a building	Note (2) to Group 1 of Schedule 9
construction of a building	Notes (16) to (18) to Group 5 of Schedule 8(18) (but see paragraph 27(6) of this Schedule)
construction of a building intended for use as a dwelling or a number of dwellings	Note (3) to Group 5 of Schedule 8
grant	Note (1) to Group 5 of Schedule 8/ Notes (1) and (1A) to Group 1 of Schedule 9(19)
use for a relevant charitable purpose	Notes (6) and (12) to Group 5 of Schedule 8
use for a relevant residential purpose	Notes (4), (5) and (12) to Group 5 of Schedule 8 (but see paragraphs 6(9) and 10(4) of this Schedule)

***Other definitions etc***

**34.**—(1) In this Part of this Schedule—

“notification” means written notification, and

“permission” means written permission.

(2) For the purposes of this Part of this Schedule any question whether a person is connected with another person is to be decided in accordance with section 839 of the Taxes Act(20).

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(16) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(17) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(18) Note (17) to Group 5 of Schedule 8 was amended by S.I. 2002/1101.

(19) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(17) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(18) Note (17) to Group 5 of Schedule 8 was amended by S.I. 2002/1101.

(19) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(20) 1988 c. 1; section 839 was amended by the Finance Act 1995 (c. 4), section 74 and Schedule 17, paragraph 20; the Finance Act 2006 (c. 25), sections 89 and 178, Schedule 13, paragraphs 7 and 25 and Schedule 26, Part 3(15); the Income Tax Act 2007 (c. 3), section 1027 and Schedule 1, paragraphs 1 and 223; and S.I. 2005/3229.

(3) Any reference in any provision of this Part of this Schedule to a public notice is to a notice published by the Commissioners for the purposes of that provision.

## PART 2

### RESIDENTIAL AND CHARITABLE BUILDINGS: CHANGE OF USE ETC

#### ***Meaning of “relevant zero-rated supply”***

**35.** For the purposes of this Part of this Schedule a “relevant zero-rated supply” means a grant or other supply which—

- (a) relates to a building (or part of a building) intended for use solely for a relevant residential purpose, or
- (b) relates to a building (or part of a building) intended for use solely for a relevant charitable purpose,

and which, as a result of Group 5 of Schedule 8, is zero-rated (in whole or in part).

#### ***Person to whom supply made grants interest etc in building and building not intended solely for relevant residential or charitable purpose***

**36.—**(1) This paragraph applies if—

- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to a person, and
- (b) conditions A and B are met.

(2) Condition A is that, within the period of 10 years beginning with the day on which the building is completed, the person grants an interest in, right over or licence to occupy—

- (a) the building or any part of it, or
- (b) the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related.

(3) Condition B is that after the grant—

- (a) the whole or any part of the building or of the part to which the grant relates, or
- (b) the whole of the building or of the part to which the grant relates, or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related,

is not intended for use solely for a relevant residential purpose or a relevant charitable purpose.

(4) So far as the grant relates to so much of the building as—

- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies, and
- (b) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant,

it is taken to be a taxable supply in the course or furtherance of a business which is not zero-rated as a result of Group 5 of Schedule 8.

***Person to whom supply made uses building otherwise than for relevant residential or charitable purpose***

37.—(1) This paragraph applies if one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to a person and, within the period of 10 years beginning with the day on which the building is completed, the person uses—

- (a) the building or any part of it, or
- (b) the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related,

for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

(2) The person's interest in, right over or licence to occupy so much of the building as—

- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies, and
- (b) is used otherwise than for a relevant residential purpose or a relevant charitable purpose,

is treated as follows.

(3) The interest, right or licence is treated for the purposes of this Act as—

- (a) supplied to the person for the purposes of a business which the person carries on, and
- (b) supplied by the person in the course or furtherance of the business when the person first uses it for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

(4) The supply is taken to be a taxable supply which is not zero-rated as a result of Group 5 of Schedule 8.

(5) The value of the supply is taken to be the amount obtained by the formula—

$$A \times \left( \frac{10 \square B}{10} \right)$$

(6) For the purposes of the formula, A is the amount that yields an amount of VAT chargeable on it equal to—

- (a) the VAT which would have been chargeable on the relevant zero-rated supply, or
- (b) if there was more than one supply, the aggregate amount of the VAT which would have been chargeable on the supplies,

had so much of the building not been intended for use solely for a relevant residential purpose or a relevant charitable purpose.

(7) For the purposes of the formula, B is the number of whole years since the day the building was completed for which the building or part concerned has been used for—

- (a) a relevant residential purpose, or
- (b) a relevant charitable purpose.

***Supplies in relation to a building where part designed for residential or charitable use and part designed for other uses***

38. Note (10) of Group 5 of Schedule 8 applies for the purposes of this Part of this Schedule.

***Definitions***

39. In this Part of this Schedule, references to the expressions listed in the first column are to be read in accordance with the provisions listed in the second column—

<i>Expression</i>	<i>Provision</i>
completion of a building	Note (2) to Group 1 of Schedule 9
grant	Note (1) to Group 5 of Schedule 8(21)/ Notes (1) and (1A) to Group 1 of Schedule 9(22)
use for a relevant charitable purpose	Notes (6) and (12) to Group 5 of Schedule 8
use for a relevant residential purpose	Notes (4), (5) and (12) to Group 5 of Schedule 8

## PART 3

### GENERAL

#### *Benefit of consideration for grant accruing to a person other than the grantor*

**40.**—(1) This paragraph applies if the benefit of the consideration for the grant of an interest in, right over or licence to occupy land accrues to a person (“the beneficiary”) other than the person making the grant.

(2) The beneficiary is to be treated for the purposes of this Act as the person making the grant.

(3) So far as any input tax of the person actually making the grant is attributable to the grant, it is to be treated for the purposes of this Act as input tax of the beneficiary.”.

#### **3. Appeals**

(1) VATA 1994(23) is amended as follows.

(2) In section 83(24) (appeals), after paragraph (wa) insert—

“(wb) any refusal of the Commissioners to grant any permission under, or otherwise to exercise in favour of a particular person any power conferred by, any provision of Part 1 of Schedule 10;”.

(3) In section 84(25) (further provisions relating to appeals), after subsection (7A) insert—

“(7ZA) Where there is an appeal against such a refusal as is mentioned in section 83(wb)

—

(a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the refusal, and

(b) the refusal shall have effect pending the determination of the appeal.”.

#### **4. Developmental tenancies, leases or licences**

(1) Paragraph (b) of item 1 in Group 1 of Schedule 9 to VATA 1994 (exempt supplies of land not to include supplies made pursuant to a developmental tenancy, developmental lease or developmental licence) is repealed.

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(21) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(22) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(21) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(22) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(23) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23).

(24) Section 83 has been amended; the relevant amendment was made by section 31(3) of the Finance Act 1996 (c. 8) which inserted paragraph (wa).

(25) Section 84 has been amended; the relevant amendment was made by section 31(4) of the Finance Act 1996 which inserted subsection (7A).

(2) Note (7)(26) in that Group (meaning of developmental tenancy, developmental lease or developmental licence) is repealed.

**5. Co-owners etc of buildings and land**

(1) Section 26 of FA 1995(27) (co-owners etc of buildings and land) is repealed.

(2) Accordingly—

(a) section 51A of VATA 1994(28) is repealed, and

(b) paragraph 8(2) and (3)(29) of Schedule 10 to that Act are repealed without being rewritten in that Schedule as substituted by article 2.

**6. Consequential amendments, repeals and revocations**

Schedule 1 contains consequential amendments, repeals and revocations.

**7. Transitional provisions and savings**

Schedule 2 contains transitional provisions and savings.

*Frank Roy*  
*Alan Campbell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

21st April 2008

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(26) Note (7) in Group 1 of Schedule 9 was amended by S.I. 1995/282.

(27) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “FA” followed by a year means the Finance Act of that year; accordingly, “FA 1995” means the Finance Act 1995 (c. 4).

(28) 1994 c. 23; section 51A was inserted by section 26(1) of the Finance Act 1995 (c. 4).

(29) Paragraph 8(2) and (3) was inserted by section 26(2) of the Finance Act 1995 (c. 4).

## SCHEDULES

### SCHEDULE 1

Article 6

#### CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

### PART 1

#### ACTS

##### *Value Added Tax Act 1994 (c. 23)*

1. VATA 1994(30) is amended as follows.
2. In section 89 (adjustments of contracts on changes in VAT), in subsection (3), for “election under paragraph 2 of Schedule 10” substitute “option to tax any land under Part 1 of Schedule 10”.
3. In section 96(31) (other interpretative provisions), in subsection (10A)(b), for “paragraph 2(2) or (3) of Schedule 10” substitute “any of paragraphs 5 to 11 of Schedule 10”.
4. In Group 14 of Schedule 9(32) (exemptions: supplies of goods where input tax cannot be recovered), in paragraph (c) of item 1, for “election under paragraph 2 of Schedule 10” substitute “option to tax any land under Part 1 of Schedule 10”.
5. In Schedule 13 (transitional provisions and savings)—
  - (a) in paragraph 8(2), for “paragraph 1 of Schedule 10” substitute “Part 2 of Schedule 10”, and
  - (b) omit paragraph 10.

##### *Finance Act 1997 (c. 16)*

6. FA 1997(33) is amended as follows.
7. In section 35, omit subsection (2) (which made amendments of Schedule 10 to VATA 1994).
8. Omit section 36 (which made amendments of that Schedule).
9. In section 37, omit subsections (2) to (6) (which made amendments of that Schedule).

##### *Finance Act 2003 (c. 14)*

10. FA 2003(34) is amended as follows.

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(30) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23).

(31) Section 96 has been amended; the relevant amendments were made by section 35(1) of the Finance Act 1997 (c. 16) which inserted section 96(10A) and section 20(1) of the Finance Act 2003 (c. 14) which inserted section 96(10B).

(32) Group 14 was inserted by S.I. 1999/2833.

(33) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “FA” followed by a year means the Finance Act of that year; accordingly, “FA 1997” means the Finance Act 1997 (c. 16).

(34) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “FA” followed by a year means the Finance Act of that year; accordingly, “FA 2003” means the Finance Act 2003 (c. 14).

11. In Schedule 4 (stamp duty land tax: chargeable consideration), in paragraph 2, for “election under paragraph 2 of Schedule 10” substitute “option to tax any land under Part 1 of Schedule 10”.

## PART 2

### SUBORDINATE LEGISLATION

#### ***Value Added Tax (Buildings and Land) Order 1994 (S.I. 1994/3013)***

12. The Value Added Tax (Buildings and Land) Order 1994 (which made amendments of Schedule 10 to VATA 1994) is revoked.

#### ***Value Added Tax (Buildings and Land) Order 1995 (S.I. 1995/279)***

13. The Value Added Tax (Buildings and Land) Order 1995 (which made amendments of that Schedule) is revoked.

#### ***Value Added Tax (Special Provisions) Order 1995 (S.I. 1995/1268)***

14. The Value Added Tax (Special Provisions) Order 1995 is amended as follows.

15. In article 5 (treatment of transactions)—

- (a) in paragraph (2)(a)(35), for “election which the transferor has made” substitute “option which the transferor has exercised”,
- (b) in sub-paragraph (2A)(a)(36), for “made an election” substitute “exercised an option” and for “election required by paragraph 3(6) of Schedule 10” substitute “option required by paragraph 20 of Schedule 10”,
- (c) in sub-paragraph (2B)(b)(37), for “paragraph 2(3AA) of Schedule 10” substitute “paragraph 12 of Schedule 10”,
- (d) in paragraph (3), omit the definition of “election” and insert—

““option” means an option to tax any land having effect under Part 1 of Schedule 10 to the Act;”, and
- (e) in that paragraph, in the definitions of “transferor” and “transferee”, for “paragraph 3(7) of Schedule 10” substitute “paragraph 3 of Schedule 10”.

#### ***Value Added Tax Regulations 1995 (S.I. 1995/2518)***

16. The Value Added Tax Regulations 1995 are amended as follows.

17. In regulation 84 (supplies of land—special cases)—

- (a) in paragraphs (3) and (4)(b)(38), for “wholly or mainly” substitute “wholly, or substantially wholly”,
- (b) in paragraph (5)(39), for sub-paragraph (b) substitute—

“(b) paragraph 16 of Schedule 10 to the Act shall have effect for determining the meaning of “eligible purposes” and “occupation”;

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(35) Paragraph (2) was amended by S.I. 2004/779.

(36) Paragraph (2A) was inserted by S.I. 2004/779.

(37) Paragraph (2B) was inserted by S.I. 2004/779.

(38) Paragraphs (3) and (4) were substituted by S.I. 2003/1069.

(39) Paragraph (5) was substituted by S.I. 2003/1069.

- (ba) whether a person's occupation is "wholly, or substantially wholly," for eligible purposes shall be determined in the same way as it is for the purposes of paragraph 15 of that Schedule;" and
- (c) in paragraph (5)(d), for "paragraph 3A(4) of Schedule 10" substitute "paragraph 14(3) of Schedule 10".
- 18.** In regulation 94B(40) (general), in paragraph (1)(a) and (c), for "paragraph 2(1) of Schedule 10" substitute "Part 1 of Schedule 10".
- 19.** In regulation 113 (capital items to which Part 15 applies)—
- (a) in paragraph (c)(i), for "paragraph 1(5) of Schedule 10" substitute "paragraph 37(3) of Schedule 10",
- (b) in paragraph (c)(ii), for "paragraph 1(6)(b) of that Schedule" substitute "paragraph 37(5) of that Schedule",
- (c) in paragraph (d)(i)(41), after "the Act" insert "(as that Schedule stood before being rewritten by article 2 of the Value Added Tax (Buildings and Land) Order 2008)", and
- (d) in paragraph (d)(ii), after "that Schedule" insert "(as that Schedule so stood)".
- 20.** In regulation 114 (period of adjustment), in paragraph (4)(c)(42), for "paragraph 1(5) of Schedule 10" substitute "paragraph 37(3) of Schedule 10".
- 21.** In regulation 115 (method of adjustment), in paragraph (5)(b)(43), for "paragraph 1(5) or 6(1) of Schedule 10 to the Act," substitute "paragraph 37(3) of Schedule 10 to the Act, or paragraph 6(1) of that Schedule as it stood before being rewritten by article 2 of the Value Added Tax (Buildings and Land) Order 2008,".

***Value Added Tax (Registered Social Landlords) (No. 2) Order 1997 (S.I. 1997/51)***

**22.** The Value Added Tax (Registered Social Landlords) (No. 2) Order 1997 (which made amendments of Schedule 10 to VATA 1994) is revoked.

***Value Added Tax (Buildings and Land) Order 1999 (S.I. 1999/593)***

**23.** The Value Added Tax (Buildings and Land) Order 1999 (which made amendments of that Schedule) is revoked.

***Value Added Tax (Buildings and Land) Order 2002 (S.I. 2002/1102)***

**24.** The Value Added Tax (Buildings and Land) Order 2002 (which made amendments of that Schedule) is revoked.

***Value Added Tax (Buildings and Land) Order 2004 (S.I. 2004/778)***

**25.** The Value Added Tax (Buildings and Land) Order 2004 (which made amendments of that Schedule) is revoked.

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(40) Regulation 94B was inserted by S.I. 2003/2318.

(41) Regulation 113(d) was amended by S.I. 1997/1614.

(42) Regulation 114(4) was amended by S.I. 1997/1614.

(43) Regulation 115(5) was amended by S.I. 1997/1614 and 1999/599.

SCHEDULE 2

Article 7

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

GENERAL PROVISIONS

1. The re-enactment by article 2 of this Order of any provision of Schedule 10 to VATA 1994<sup>(44)</sup> in a rewritten form does not affect the continuity of the law.

2. Paragraph 1 does not apply to any change in the law relating to that provision effected by that article.

3. Any thing which—

(a) has been done, or has effect as if done, under or for the purposes of a provision (a “superseded provision”) of Schedule 10 to VATA 1994 as it stood before being rewritten, and

(b) is in force or effective immediately before the commencement of the corresponding rewritten provision,

has effect after that commencement as if done under or for the purposes of the rewritten provision.

4. Any reference (express or implied) in any enactment, instrument or document to—

(a) a rewritten provision, or

(b) things done or falling to be done under or for the purposes of a rewritten provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding superseded provision had effect, a reference to the superseded provision or (as the case may be) things done or falling to be done under or for the purposes of the superseded provision.

5. Any reference (express or implied) in any enactment, instrument or document to—

(a) a superseded provision, or

(b) things done or falling to be done under or for the purposes of a superseded provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision or (as the case may be) things done or falling to be done under or for the purposes of the rewritten provision.

6. Paragraphs 1 to 5 have effect instead of section 17(2) of the Interpretation Act 1978<sup>(45)</sup> (but do not affect the operation of any other provision of that Act).

7. Paragraphs 4 and 5 have effect only in so far as the context permits.

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<sup>(44)</sup> Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23).

<sup>(45)</sup> 1978 c. 30.

## PART 2

### OTHER PROVISION

#### *Elections made before 1st November 1989*

**8.**—(1) An election under paragraph 2 of Schedule 10 to VATA 1994<sup>(46)</sup> which was made before 1st November 1989 continues to have effect in accordance with paragraph 3(1)(b) of that Schedule.

(2) In this paragraph any reference to Schedule 10 to VATA 1994 is to that Schedule as it stood before being rewritten by article 2 of this Order.

#### *Elections made before 1st March 1995*

**9.**—(1) An election under paragraph 2 of Schedule 10 to VATA 1994 which was made before 1st March 1995 continues to have effect in accordance with paragraph 3(6)(a)<sup>(47)</sup> of that Schedule.

(2) In this paragraph any reference to Schedule 10 to VATA 1994 is to that Schedule as it stood before being rewritten by article 2 of this Order.

#### *Developers of certain non-residential buildings etc*

**10.** The fact that paragraphs 5 to 7 of Schedule 10 to VATA 1994 (as it stood before being rewritten by article 2 of this Order) are not rewritten by that article is not to affect—

- (a) the continued operation of Part 15 of the Value Added Tax Regulations 1995<sup>(48)</sup> (adjustments to the deduction of input tax on capital items) in relation to supplies treated as made on or before 1st March 1997, or
- (b) the continued operation of paragraph (b) of item 1 in Group 1 of Schedule 9 to VATA 1994, as read with Note (7)<sup>(49)</sup>, in relation to supplies made before 1st June 2020.

#### *Option made before 1st June 2008 specifying a description of land*

**11.** The fact that the words “, or of a description specified,” in paragraph 3(2) of Schedule 10 to VATA 1994 (as it stood before being rewritten by article 2 of this Order) are not rewritten by that article is not to affect the continued operation of an option to tax any land—

- (a) which was made before 1st June 2008, and
- (b) which specified a description of land.

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<sup>(46)</sup> Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23).

<sup>(47)</sup> Paragraph 3(6)(a) was substituted by S.I. 1995/279.

<sup>(48)</sup> S.I. 1995/2518; relevant amending instruments are S.I. 1995/3147, 1997/1086, 1997/1614, 1999/599, 1999/3114 and 2000/258.

<sup>(49)</sup> Note (7) to Group 1 of Schedule 9 was amended by S.I. 1995/282.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which comes into force on 1st June 2008, substitutes a new Schedule 10 to the Value Added Tax Act 1994 (c. 23) (“the Act”) for the purpose of rewriting the Schedule, with amendments, into language that is clearer and easier to use. It includes further provisions, such as granting taxpayers new appeal rights relating to Schedule 10 to the Act (“Schedule 10”), consequential amendments, repeals and revocations and transitional provisions and savings.

Article 1 provides for the citation, commencement and effect of this Order. Subject to the transitional savings and provisions in Schedule 2 to the Order, it has effect (apart from Article 4) in relation to supplies made on or after 1st June 2008. Article 4 has effect (subject to Schedule 2) in relation to supplies made on or after 1st June 2020.

Article 2 substitutes Schedule 10.

The rewritten Schedule 10 which is substituted by article 2 of this Order is divided into three Parts.

Part 1 of Schedule 10 (which comprises paragraphs 1 to 34 of the Schedule) makes provision for a person to opt to tax any land. Subject to certain exceptions, supplies of land made in the course or furtherance of a business are exempt from Value Added Tax (“VAT”) by virtue of Group 1 of Schedule 9 to the Act. A business may claim credit in respect of the VAT it pays on the goods and services supplied to it (“input tax”) if the goods and services are used by the business to make taxable supplies. This will either reduce the amount payable by it to Her Majesty’s Revenue and Customs in respect of a VAT accounting period or give rise to a repayment if the input tax is greater than the VAT charged on taxable supplies made by the business during the VAT accounting period. Generally, a business cannot claim credit for input tax charged on goods and services which are used to make the VAT exempt supplies.

The high cost of many supplies relating to land and buildings means that the benefit to a business of not being required to charge VAT on supplies such as the leasing of land or buildings by virtue of the VAT exemption can be outweighed by the cost of being unable to claim credit in respect of the input tax paid on supplies made to the business which it uses to make VAT exempt supplies. By allowing a business to opt to tax (subject to certain exceptions) the supplies it makes in relation to land or a building, this disadvantage may be removed. Although this means that VAT has to be charged to the person to whom the land or building is supplied, if that person is also a business making taxable supplies, that person may be able to claim credit for the VAT charged on the supply.

Paragraph 1 provides an overview of the main provisions relating to the option to tax which enables a business to charge VAT on its supplies of land that would otherwise be exempt from VAT.

Paragraph 2 provides that if a person (“the opter”) exercises an option to tax any land in accordance with Part 1, a grant of that land made by the opter (or by a relevant associate of the opter) will not be treated as a VAT exempt supply if it is made at a time when the option to tax has effect.

Paragraphs 3 and 4 provide for the circumstances in which a body corporate is a relevant associate of an opter and the circumstances in which such a body ceases to be a relevant associate of an opter.

Paragraph 5 provides that an option to tax has no effect in relation to a grant of a building (or part of a building) which has been designed or has already been adapted for use and which is intended to be used as, a dwelling (or number of dwellings) or, where certification requirements are met, solely for a relevant residential purpose.

Paragraph 6 provides that an option to tax has no effect in relation to a grant of a building (or part of a building) to a person who certifies that it is intended for use as a dwelling (or number of dwellings) or solely for a relevant residential purpose. The circumstances in which a person may certify the required intention are contained in the paragraph but are subject to the power of the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") to publish a notice specifying the form in which such a certificate is to be made (and the information to be contained in it) and preventing a person from giving a certificate unless specified conditions are met.

Paragraphs 7, 8 and 9 provide that an option to tax has no effect in relation to a grant of a building (or part of a building) intended for use solely for a relevant charitable purpose (but not as an office), or as a pitch for a residential caravan or facilities for the mooring of a residential houseboat which may be used as a residence throughout the year.

Paragraph 10 provides that an option to tax has no effect in relation to a grant to a relevant housing association which certifies that the land will be used for the construction of a building or buildings intended for use as a dwelling (or dwellings), or solely for a relevant residential purpose.

Paragraph 11 provides that an option to tax has no effect in relation to a grant to an individual if the land is to be used for the construction of a building for use by the individual as a dwelling provided the construction is not carried out in the course or furtherance of a business carried on by the individual.

Paragraph 12 provides that a supply arising from a grant made by a person who was a developer of the land concerned will not be a taxable supply as a result of an option to tax if that person, or a person who is a development financier, intended or expected that the land would become, or continue to be, exempt land.

Paragraph 13 describes the circumstances in which a grant in relation to any land is made by a developer of the land.

Paragraph 14 explains the circumstances in which a person is a development financier.

Paragraphs 15 and 16 explain the meaning of exempt land.

Paragraph 17 makes special provision regarding the application of paragraph 12 to a grant in relation to land made on or after 19th March 1997 and before 10th March 1999.

Paragraph 18 specifies the extent to which an option applies to land, a building or part of a building which is (or is to be) constructed on the land and the circumstances in which more than one building or complexes consisting of a number of units are treated as a single building. The paragraph also provides that a building includes a planned building and any enlargement, extension or annex to a building.

Paragraph 19 provides for the time from which an option to tax has effect.

Paragraph 20 provides that an option only has effect if notified to the Commissioners within 30 days from when it was exercised, or such longer period allowed by the Commissioners, together with such information as they require.

Paragraph 21 provides that if a person makes a real estate election and notifies it to the Commissioners in accordance with that paragraph in the form specified in a public notice, then, subject to certain exceptions, the subsequent acquisition of a relevant interest in land or a building by that person (or a body corporate treated under sections 43A to 43D of the Act as a member of the same group as that person ("relevant group member")) will cause the person who made the real estate election to be treated as opting to tax the land or building concerned. A person who makes a real estate election may not revoke it but the Commissioners may do so if that person does not comply with a requirement to give to the Commissioners information specified in a public notice in the time allowed.

Paragraph 22 provides that a real estate election revokes (in whole or part) an earlier option to tax made by the person making that election or a relevant group member if they or another relevant group member have no relevant interest in the land or building concerned when the real estate election

is made. An option to tax that was exercised in relation to land otherwise than by reference to a building or part of a building that is not revoked may be converted by the person making the real estate election into separate options to tax different parcels of that land. The separate options must be identified in the notification of the real estate election pursuant to paragraph 21 and are treated, for the purposes of Part 1 apart from paragraph 3(2), as having been made by the person making the real estate election with effect from the time when the original option had effect. For the purposes of determining whether, by virtue of paragraph 3(2), a body corporate is a relevant associate of the person who, by virtue of the real estate election, converts an option into an option treated as made by that person, the option is treated as having effect when the real estate election is made.

Paragraph 23 provides that an option to tax may be revoked by an opter within 6 months from the day on which it had effect provided certain conditions are met.

Paragraph 24 provides where an opter has held no interest in, right over or licence to occupy a building or land for a continuous period of 6 years beginning at any time after the option has effect, the option will be revoked from the end of that period.

Paragraph 25 provides for an option to be revoked after it has had effect for more than 20 years providing conditions specified in a public notice are met and notification of the revocation of the option is given to the Commissioners. Where the conditions specified in a public notice are not met, an option that has had effect for more than 20 years may, if the prior permission of the Commissioners is obtained (and subject to any conditions imposed by them), be revoked with effect from the day when their permission is given or, where they have power to do so, an earlier day specified by the Commissioners.

Paragraph 26 provides that, in the circumstances described in that paragraph, an option will not be revoked in accordance with paragraphs 22(2) and (3) (real estate elections) and 24 (revocation of option after a lapse of 6 years since having a relevant interest).

Paragraph 27 specifies the circumstances in which a new building and all the land within its curtilage may be excluded from the effect of an option.

Paragraph 28 provides that where a VAT exempt supply of land occurs in the 10 years preceding an option to tax having effect in respect of that land, an option to tax may only be made if conditions specified in a public notice are met or the prior permission of the Commissioners is obtained. The Commissioners must refuse their permission if they are not satisfied that there would be a fair and reasonable attribution of relevant input tax to relevant supplies.

Paragraph 29 provides that an application for prior permission under paragraph 28 must be made in a specified form and that the Commissioners may specify conditions subject to which their permission is given which, if broken, would allow them to treat the application as if it had not been made. Where permission is given, the option to tax has effect from the start of the day on which the application for permission was made or any later day specified in the application.

Paragraph 30 provides that the Commissioners may dispense with the requirement for their prior permission to be given under paragraph 28 so that an option to tax purportedly exercised and notified in circumstances where their prior permission should have been obtained may be treated as if it had been validly exercised.

Paragraph 31 provides that if an option to tax is exercised after the time of a grant relating to land, any supplies arising from that grant, which are made after the option takes effect, are nevertheless treated as taxable supplies.

Paragraphs 32 and 33 provide that certain Notes to Group 5 of Schedule 8 and Group 1 of Schedule 9 to the Act apply for the purposes of Part 1 of Schedule 10.

Paragraph 34 provides other definitions for the interpretation of Schedule 10.

Part 2 of Schedule 10 (which comprises paragraphs 35 to 39 of the Schedule) rewrites the former paragraph 1 of Schedule 10 as amended by [S.I. 2002/1102](#). It provides that a taxable supply will

be made by a person who has received a relevant zero-rated supply in relation to certain buildings which are no longer used or intended for use for relevant charitable or relevant residential purposes.

Paragraph 35 defines the meaning of relevant zero-rated supply.

Paragraph 36 provides that a person granting an interest in, right over or licence to occupy a building or part of a building will, where conditions A and B of that paragraph are met, be treated as making a taxable supply in the course or furtherance of a business in so far as the grant is in respect of a building (or part of the building) to which a relevant zero-rated supply related if the building (or the relevant part of it) is not intended for use solely for relevant residential or relevant charitable purposes after the grant.

Paragraph 37 provides that a person will be treated as making a supply for a value determined by that paragraph if a zero-rated supply relating to a building (or part of a building) has been made to that person and, within 10 years of the building's completion, that person uses it (or the part of it to which the zero-rated supply related) for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

Paragraphs 38 and 39 provide that certain Notes to Group 5 of Schedule 8 and Group 1 of Schedule 9 to the Act apply for the purposes of Part 2 of Schedule 10.

Part 3 of Schedule 10 (which comprises paragraph 40 of the Schedule) rewrites the former paragraph 8 of Schedule 10. Section 26(2) of the Finance Act 1995 (c. 4) made provision for paragraph 8 to become sub-paragraph (1) of that paragraph and for sub-paragraphs (2) and (3) to be inserted into paragraph 8. Section 26(3) of that Act provided that section 26 should be brought into force on such day as the Commissioners may by order made by statutory instrument appoint. The Commissioners have made no order to bring section 26 of the Finance Act 1995 into force. The amendments that would have become sub-paragraphs (2) and (3) of paragraph 8 of the former Schedule 10 if section 26 had been brought into force have not been rewritten.

Paragraph 40 provides that where the consideration for a grant of an interest in, right over or licence to occupy land accrues to a person ("the beneficiary") other than the person making the grant, that beneficiary is treated as making the grant and input tax of the person actually making the grant which is attributable to it is treated as input tax of the beneficiary.

Article 3 amends Part 5 of the Act (appeals). Article 3(2) inserts section 83(wb) into the Act so that any refusal of the Commissioners to grant any permission under, or otherwise to exercise in favour of a particular person any power conferred by any provision of Part 1 of Schedule 10, may be appealed to the VAT and duties tribunals. Article 3(3) inserts section 84(7ZA) into the Act so that the tribunal shall not allow such an appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the refusal and that the refusal has effect pending determination of the appeal.

Article 4 repeals paragraph (b) of item 1 and Note (7) in Group 1 of Schedule 9 to the Act (developmental tenancy, developmental lease or developmental licence).

Article 5 repeals section 26 of the Finance Act 1995 (c. 4) (co-owners etc of buildings and land) which was not brought into force with consequential repeals of section 51A of, and paragraph 8(2) and (3) of Schedule 10 to, the Act.

Article 6 and Schedule 1 make consequential amendments to Acts of Parliament and subordinate legislation arising from the rewriting of Schedule 10. Part 1 of Schedule 1 amends the Act, the Finance Act 1997 (c.16) and the Finance Act 2003 (c. 14). Part 2 of Schedule 1 makes amendments and revocations in respect of certain Orders and Regulations made under the Act.

Article 7 and Schedule 2 make general provision for the continuity of the law in connection with the rewriting of Schedule 10 and other provision in respect of actions undertaken before 1st June 2008.

Part 1 of Schedule 2 makes provision having effect instead of section 17(2) of the Interpretation Act 1978 (c. 30) by providing that the re-enactment of any provision of Schedule 10 does not affect the continuity of the law (except where there is a change in the law relating to that provision).

Anything done or having effect as if done under a superseded provision of Schedule 10 which is in force or effective immediately before commencement of the corresponding rewritten provision has effect afterwards as if done under or for the purposes of the rewritten provision. So far as the context permits, references in any enactment, instrument or document to a rewritten provision or a superseded provision (or things done or falling to be done under or for the purposes of such a provision) must, in relation to times or circumstances falling before or after the re-enactment of Schedule 10, be read as references to the corresponding superseded or rewritten provision as appropriate.

Part 2 of Schedule 2 provides that elections made before 1st November 1989 continue to have effect from the beginning of 1st August 1989 (or of any later day specified in the election) and that any election made before 1st March 1995 and having effect before that day continues to have effect notwithstanding that it has not been notified to the Commissioners. It also provides that the fact that paragraphs 5 to 7 of Schedule 10 as it stood before being rewritten are not rewritten does not affect the continued operation of Part 15 of the Value Added Tax Regulations 1995 ([S.I. 1995/2518](#)) (adjustment to input tax deduction on capital items relating to supplies made on or before 1st March 1997) or the continued operation of paragraph (b) of item 1 and Note (7) in Group 1 of Schedule 9 to the Act in relation to supplies made before 1st June 2020. Additionally, the fact that the words “, or of a description specified” in paragraph 3(2) of Schedule 10 as it stood before rewriting are not rewritten does not affect the continued operation of an option to tax made before 1st June 2008 which specified a description of land.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.